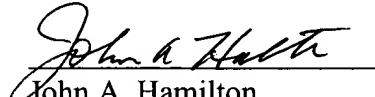


Appl. Ser. No. 09/493,871
Atty. Docket No. 11714-P02
Notice of Appeal



CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 22, 2005.


John A. Hamilton
Reg. No. 48,946

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Christopher Evans, et al. Examiner: M. Aryanpour
Serial No. 09/493,871 Group Art Unit: 3711
Filed: January 28, 2000
For: APPARATUS AND METHOD FOR SOCCER TRAINING AND PRACTICE

PERKINS, SMITH & COHEN,, LLP
One Beacon Street
Boston, MA 02108
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To: Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Notice of Appeal (F) Under 35 U.S.C. §134

Sir:

Please enter the enclosed Notice of Appeal in the above-cited patent application, accompanied by the associated (small entity) filing fee, Rule 132 Declaration, petition and associated fee for a two-month extension of time for responding to the 22 September 2004 Final Office Action. No additional fees are believed necessary for consideration of this submission. Additional fees deemed necessary, however, are hereby authorized to be charged to our Deposit Account No. 03-2410, Order No. 11714-P02.

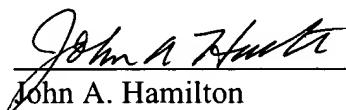
An Appeal Brief will be submitted within two months of this Notice, providing the legal arguments that support patentability of the rejected patent claims over the cited art, in light of the evidentiary support to points previously made and showing: (a) the commercial acceptance of the invention (a product corresponding to the claim) with no source of such success other than merit of the invention; and (b) that the presently claimed invention provides a synergistic solution in a minimally-interfering soccer practice tool that provides realistic ball motion (i.e., lift and roll) and true 360° range of kicking ability that includes strong ground-adhering characteristics in a manner not obvious to past or even some present artisans.

If any questions remain, please call Applicants' attorney, collect, at the number given above.

Respectfully submitted,
CHRISTOPHER EVANS, et al., Applicants

Dated: February 22, 2005

By:


John A. Hamilton
Reg. No. 48,946
Attorney for Applicants



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Serial No. 09/493,871 Group Art Unit: 3711
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Rule 132 Declaration

The undersigned declarant, a co-inventor/co-applicant in the above identified application states:

1. I have reviewed the above application and its parent as filed and amended, including the proposed claims before the Examiner and all record references and PTO actions and state the following regarding the claimed invention of the present application in relation to prior art.
2. I incorporate herein by reference the contents of my previous declarations of 05 June 2002, 14 October 2003 and 15 June 2004 and their associated Appendices reflecting the commercial success data of our Soccer Edge® training device, which is an embodiment of the presently claimed invention, in comparison to commercial embodiments of the Sowards and Ainscough, et al., inventions. We have now sold over 36,000 units and have placed the devices for sale in over 1,000 stores currently. Many of these stores have requested re-stocking of our device, having sold out their initial allotments.
3. Our sales of the SoccerEdge ® trainer have increased year-after-year since the product was first placed on the market. In the same time period, a number of competitors have marketed competing soccer trainers, such as the Star Kick™, SoccerPal®, PenaltyMaster®, Soccix™, Brine Skillmaster™, and Kwik Kick™, and Iso-Trainer™ with no measurable diminution of our sales.
4. This commercial success can only be attributed to merit of the product as appraised by these sophisticated retail customers. The product essentially "sells itself", in that our company has undertaken no major advertising efforts such, for example, newspaper ads or infomercials, and remains without the resources or sales force of typical sporting goods companies, which employ marketing/advertising and the leveraging of other products to gain shelf space.
5. My co-inventor and I have had positive feedback from soccer coaches and in the market place as described below and in my previously-filed declaration. Our product (per the claimed invention) has been designated the Official Licensed Bungee Soccer Trainer of the U.S. Soccer Federation, the governing body of

organized soccer in the United States.

6. I have previously provided information regarding the aforementioned Penaltymaster™ and Soccix™ rebounding soccer trainers. The Soccix trainer utilizes two rubber loops clipped directly to the ball and attached to two croquet-style wickets, rather than the single rubber loop, ball net and wicket of the Penaltymaster trainer. Patents are apparently pending for both the Soccix and Penaltymaster designs, both of which are inferior to the claimed combinations of the present invention.
7. I have previously provided evidence of the comparative merits of the presently claimed invention in comparison to the Sowards' Kwik Kick Speed Ball™ trainer and the Ainscoff trainer. As noted previously, the Ainscoff trainer was offered for sale on TV home shopping but was not a durable offering and can no longer be found for sale. The Kwik Kick Speed Ball™ trainer had been selling at The Sports Authority until our Soccer Edge® training device was introduced to the market. The Kwik Kick is no longer for sale at The Sports Authority, while our product has been rolled out to all of their stores.
8. I previously indicated the comparative merits of our soccer trainer as compared to other products by referring to the recall announcement from the U.S. Consumer Product Safety Commission related to a Franklin Sports soccer trainer that employed a straight metal stake or spike to anchor the product. The risk of injury presented by the Franklin product, if obvious, would have been anticipated and prevented in the product's design (*i.e.*, Franklin retrieved its straight stakes rather than replace them with spirals.) Yet another new rebounding soccer trainer has been introduced to the market with straight stakes, the Iso-Trainer™ soccer training kit (<http://www.iso-trainer.com>). Again, I assert that if the solution provided by our device to the problem of kicked soccer balls becoming dislodged from the ground were obvious, it would have been adopted uniformly by the industry.
10. The art as a whole fails to recognize the need for a combination of a combined elastic/inelastic line with a net carrier for the ball and a universally flexible means for strongly securing in a minimally-interfering way a retrieval-type soccer kick practicing device that provides realistic ball motion (*i.e.*, lift and roll) and true 360° range of kicking ability. Each of the applied references fails individually and in the aggregate to do so. I incorporate my discussion of the Ainscough, et al., and Sowards references' failure to teach or suggest the presently claimed invention, made in my previous declaration and responses in the application of 14 October 2003 and 06 June 2002. The Moore reference depicts and describes only a "suitable anchor" consisting of a tent stake, and a ball holder mechanism comprised of four orthogonally arranged pieces of webbing and an elastic band

securing them to the ball. The former will not provide the sufficient securing force to accommodate stronger kickers, and the latter will not provide true soccer ball motion, as the presently claimed invention provides.

11. The present invention as described and claimed comprises a soccer ball practice apparatus made as a combination of a tether line including an elastic section, a net container/securement for a soccer ball, a ground insertable/removable anchor unit as a spiral with an upper section and a handle which is turned for insertion of the spiral portion to enter the ground and to leave only an upper circular portion exposed, the tether line tied between the anchor means and the net, by a ring that rides on the circular portion of the anchor upper circle portion, a shackle interconnect or the like from the elastic portion of the tether line (and a swivel) to the ring to enable rotation of the tether line about its own axis. The kicked ball returns to the kicker, rolling back without material interference from the apparatus.
12. My co-inventor and I are familiar with soccer play and practice and the full range of commercially available training choices on the market, presently or in the past. The presently claimed invention provides a much closer approximation of normal game play than the systems of the cited art, while minimizing the possibility that a user's kick will dislodge the stake from the ground. The present invention allows repetitive kicking in a variety of angles and trajectories from any position around the anchor on the fly. The player can move around to kick the ball, which cannot be done with the Sowards or Ainscough et al. devices. Most importantly, with the present invention a player can kick the ball straight ahead in front of herself and see if the ball goes in the direction intended. One troublesome skill for young players to learn is "lifting" the ball upward when they kick it. This is impossible with the Sowards device. The Ainscough et al. device does not allow a 360° range of kick up and over the device, as its support pipe and swiveling arm only allow 360 degree rotation about the axis of the pole; therefore, the player will not know if the ball would have traveled in the direction intended with the rise in trajectory desired, which defeats the purpose of practice kicking. The Moore device does not show a practice device that has a strong ground connection. With the Moore device, a kicker may unintentionally pull the tent stake from the ground with her kick (a potentially hazardous event as evidenced by the CPSC recall noted in paragraph 9), the partial webbing/elastic band ball holding mechanism will not provide true ball motion, and its additional weight will further inhibit the ability to get "lift" under the ball.
13. I have tested and observed, that using the present invention with an elastic cord a player can effect a great variety of fast returns of different angles that are anything but "fixed." The present invention also provides truer ball motion, absolutely necessary for young players developing their kicking skills.

FROM :

PHONE NO. : 6172670210

Feb. 22 2005 07:06PM P1

Att'y Docket No. 11714-P02
Christopher Evans, et al.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United State Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Dated: February 22, 2005

By:



CHRISTOPHER EVANS

11714-P02_R132decl_022205